

DRAFT

**Memorandum of Understanding
Amongst the Golden Gate Bridge, Highway and Transportation District,
the Metropolitan Transportation Commission and the
San Francisco Transportation Authority
Pertaining to the Funding of the Doyle Drive Reconstruction Project**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into as of this ____ day of _____, 2008, by and among the Golden Gate Bridge, Highway and Transportation District ("Bridge District"), established pursuant to Streets and Highways Code Section 27000 *et seq.*, the Metropolitan Transportation Commission ("MTC"), established pursuant to Government Code Section 66500 *et seq.*, and the San Francisco County Transportation Authority ("SFCTA"), established pursuant to a ballot measure approved by the voters in the City and County of San Francisco, and collectively referred to herein as "the parties".

RECITALS

WHEREAS, the parties to this MOU are public agencies created by the laws of the State of California, and each party is empowered and has been duly authorized to enter into this MOU;

WHEREAS, Doyle Drive is a state highway owned and operated by the State of California Department of Transportation ("Caltrans");

WHEREAS, Doyle Drive is a 70 year old structure in need of seismic reconstruction at the earliest practicable date;

WHEREAS, although Doyle Drive is owned and operated by Caltrans, the SFCTA has assumed the role of lead agency for the Doyle Drive Reconstruction Project, and is responsible for securing, among other responsibilities, all necessary funding, permits, property rights, regulatory approvals, and environmental approvals, to rebuild this 70 year old seismically deficient structure;

WHEREAS, the State of California has committed to fund the Doyle Drive Reconstruction Project, (as more fully described in the Environmental Impact Statement/Report and Section (4) Evaluation for the South Access to the Golden Gate Bridge in the City and County of San Francisco on Route 101, Doyle Drive and Richardson Avenue from Lombard Avenue to the Golden Gate Bridge Toll Plaza, and on Route 1, from the Ruckman Undercrossing to the Route

101 Junction, prepared by SFCTA, the Federal Highway Administration, and Caltrans) in the amount of \$405 million from the State Highway Operations and Protection Program;

WHEREAS, a substantial shortfall in funding remains for the Doyle Drive Reconstruction Project;

WHEREAS, in recognition of the vital importance of a seismically upgraded Doyle Drive to users of the Golden Gate Bridge, as well as to the economy and vitality of the overall Bay Area region, the Bridge District and MTC have agreed to make a capped financial contribution toward the cost of reconstruction of Doyle Drive in accordance with the terms and conditions set forth below; and

WHEREAS, the parties desire to memorialize their understandings with respect to the funding of the Doyle Drive Reconstruction Project so as to enable the project to proceed.

NOW, THEREFORE, the parties to this MOU agree as follows:

1. Financial Contribution. In recognition of the vital importance of a seismically upgraded Doyle Drive to users of the Golden Gate Bridge, as well as to the overall Bay Area region, MTC and the Bridge District will each contribute the following amounts for construction work to the agency administering the Doyle Drive Reconstruction Project:

MTC:	\$80 million
------	--------------

Bridge District:	\$75 million
------------------	--------------

The Bridge District's contribution of \$75 million will be increased to the total amount of \$80 million by means of contributions to other Bridge District projects from the Transportation Authority of Marin and the Sonoma County Transportation Authority, representing Marin and Sonoma County residents, which are the subject of separate agreements. This indirect contribution of \$5 million by Marin and Sonoma Counties constitutes their maximum total contribution to the Doyle Drive project. If the Marin County or Sonoma County contributions are not authorized by their respective policy boards, the total contribution by the Bridge District will be reduced by the

amount not forthcoming from one or both of these two counties but at no time will the contribution amount decrease below \$75 million.

Said amounts represent the maximum total contribution to be made by Bridge District and MTC for the Doyle Drive Reconstruction Project, irrespective of any future modifications of the current cost estimate, the receipt of construction bids in excess of that estimate, or change orders. By making these limited financial contributions, neither the Bridge District nor MTC is agreeing to assume ownership or control over Doyle Drive or any aspect of the design, construction, maintenance or liability risks and responsibilities associated therewith. As between SFCTA, MTC and the Bridge District, SFCTA shall be solely responsible for financing all other costs of the Doyle Drive Reconstruction Project and for the assumption of all liability risks associated with or arising out of the Project.

2. Prohibition on Tolling Other than funding of the Bridge District's one-time contribution amount specified in Section 1, there will be no tolling of any kind on the Golden Gate Bridge or on Doyle Drive to fund the Doyle Drive Reconstruction Project, except as provided in Section 3 below.

3. Regional Cordon Tolling Program. A regional cordon tolling program for the purposes of congestion management that tolls the Doyle Drive entrance to San Francisco in a similar manner and time frame as all other entrances to San Francisco are tolled may be permitted. Funds collected pursuant to a regional cordon tolling program may be expended on the Doyle Drive Reconstruction Project.

4. Manner of Payment. The financial contribution specified in Section 1 shall be paid by the Bridge District and MTC to SFCTA no later than the final year of construction of the Doyle Drive Reconstruction project. The staffs of the Bridge District and MTC shall establish the administrative procedures for the invoicing and distribution of the funds consistent with the project's construction schedule.

5. Reimbursement of Financial Contribution. If, notwithstanding the prohibition that no toll of any kind is to be exacted from users of the Golden Gate Bridge or Doyle Drive expressly for the reconstruction of Doyle Drive except as permitted under Section 3, an act of the State Legislature authorizes and leads to the imposition of such a toll for such a purpose, all amounts contributed by the Bridge District and MTC shall be reimbursed to the respective agencies, plus interest for their respective contributions, and the Bridge District and MTC shall not be required to

make any remaining payments. Interest shall be calculated at a blend of the average annual rate of return on the Bridge District's and MTC's investments. Any such repayment must occur within thirty six months following the imposition of such a toll.

6. Effective Date. This MOU shall become effective upon the approval by all of the governing boards of the parties and execution by their respective duly authorized representatives. Unless otherwise extended by amendment of the parties pursuant to paragraph 8 below, this MOU shall be terminated automatically if a principal construction contract for the Doyle Drive Reconstruction Project is not awarded and executed by January 1, 2014.

7. Notices. Any notice which any party wishes to give to another party under this MOU shall be in writing, delivered personally to the representative of the parties identified below, or by deposit in the United States Mail, first class postage prepaid, address as follows:

To Bridge District: General Manager
Golden Gate Bridge, Highway
and Transportation District
P.O. Box 9000, Presidio Station
San Francisco, CA 94129-0601

To MTC: Executive Director
Metropolitan Transportation Commission
Joseph P. Bort Metro Center
101 Eighth Street
Oakland, CA 94607-4700

To SFCTA: Executive Director
San Francisco County Transportation Authority
100 Van Ness Avenue, 26th Floor
San Francisco, CA 94102

Notices sent by mail shall be deemed to be delivered five (5) days after the date they are deposited in the U.S. Mail. A party may change the address to which notices are to be sent only by giving notice to the other parties as provided in this section.

8. Miscellaneous

a. This MOU may be amended or modified only in writing approved by a vote of the governing boards of each of the parties.

b. All recitals are incorporated herein by reference and shall be deemed part of this MOU for all purposes.

c. This MOU shall be construed reasonably, in accordance with its terms. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this MOU.

d. No party may assign or delegate any of its rights or obligations under this MOU without the prior written consent of all other parties to this MOU. This MOU shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

e. If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

f. The waiver of any breach of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or another provision of this MOU. Any waiver must be in writing, signed by an authorized representative of the waiving party.

g. Nothing in this MOU, whether expressed or implied is intended to confer any rights or remedies on any persons other than the parties to it, nor is anything in this MOU intended to relieve or discharge the obligation or liability of any third persons to any party to this MOU.

h. If any legal proceeding shall be instituted by any of the parties hereto to enforce the terms of this MOU or to determine their respective rights or obligations under this MOU, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonably attorney's fees.

i. This MOU constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents or understandings of the parties.

9. Maintenance, Audit and Inspection of Records. SFCTA shall permit authorized representatives of MTC and the Bridge District to inspect, audit and make copies of any and all data or records of SFCTA relating to the Doyle Drive Reconstruction Project. SFCTA shall maintain all such records for a period of four (4) years from the date of completion of the Doyle Drive Reconstruction Project as evidenced by the filing of a Notice of Completion.

10. Cost Reports. SFCTA will provide MTC and the Bridge District with regular cost reports showing expenditures for the Doyle Drive Reconstruction Project. Additionally, SFCTA agrees to maintain close coordination and interaction with the Bridge District and MTC to minimize interference with the Bridge District operations or administration of its responsibilities to maintain the Golden Gate Bridge.

11. Dispute Resolution. If a question arises regarding interpretation of this MOU or its performance or the alleged failure of a party to perform, the party raising the question or making the allegation shall give written notice thereof to the other parties. The parties shall promptly meet in an effort to resolve the issues raised. If the parties fail to resolve the issues raised, alternative forms of dispute resolution, including but not limited to mediation may be pursued by mutual agreement at equally shared costs. It is the intent of the parties, to the extent possible, that litigation be avoided as a means of dispute resolution.

12. Jurisdiction. This MOU and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this MOU by their respective duly authorized officers as of the day and year first above written.

GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT

By: _____
President, Board of Directors

By: _____

Attest:

District Secretary

Approved as to form:

Attorney for the District

METROPOLITAN TRANSPORTATION COMMISSION

By: _____
Chair

By: _____

Attest:

Secretary

Approved as to form:

Attorney

SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY

By: _____
Chair

By: _____

Attest:

Secretary

Approved as to form:

Attorney

J:\SECTION\EXEC\EO\Andrew Fremier\MOU\Doyle Drive MOU - GGB Revision 110508_Denis Mulligan.doc